

A **ENERSAFE SDN BHD**

v.

MEGARINA SDN BHD

B COURT OF APPEAL, PUTRAJAYA
DENIS ONG JCA

AZMEL MAAMOR JCA
ZULKEFLI MAKINUDIN JCA
[CIVIL APPEAL NO: T-02-29-2002]

C 27 FEBRUARY 2006

CIVIL PROCEDURE: *Jurisdiction - High Court - Cause of action arose in Sarawak - Action filed in High Court at Kuala Terengganu - Whether said court has jurisdiction to hear action - Courts of Judicature Act 1964, s. 23(1)*

CIVIL PROCEDURE: *Pleadings - Striking out writ and statement of claim - Whether claim obviously bound to fail - Rules of the High Court 1980, O. 18 r. 19*

E The respondent had filed a claim against the appellant for monies allegedly due to the respondent from the appellant in respect of goods sold and delivered by the respondent to the appellant at its project in Paka, Terengganu pursuant to a supply agreement entered into between the parties. The appellant thereafter filed an application by way of summons in chambers to strike out the respondent's writ and statement of claim under O. 18 r. 19 of the Rules of the High Court 1980 ('the RHC') on the ground that the High Court at Kuala Terengganu did not have the jurisdiction to entertain the respondent's claim. The learned senior assistant registrar dismissed the appellant's application, ruling that the High Court at Kuala Terengganu had the jurisdiction to hear the respondent's claim. The appellant's subsequent appeal to the High Court against that decision was dismissed. Hence, the present appeal. The appellant contended that the cause of action and the facts on which the proceedings were based accrued and occurred in Miri, Sarawak and that s. 23(1) of the Courts of Judicature Act 1964 ('the Act') applied in its favour; thus, the High Court which had the jurisdiction to hear this case was the High Court in Sabah and Sarawak.

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Held (dismissing the appeal)**A****Per Zulkefli Makinudin JCA:**

- (1) The learned High Court judge, after having considered all the relevant facts and the applicable law, had arrived at the correct decision. The learned judge was right when he stated that each subparagraph *ie*, subpara. (a), (b), (c) and (d) of s. 23(1) of the Act, is followed by a comma and the word 'or' which means that they must be construed disjunctively. In this case, it was not disputed that the supply of materials as envisaged in the supply agreement was delivered to the appellant's project at Paka, Terengganu and that the appellant had a business address in Terengganu. With the existence of these undisputed facts, it was clearly shown that this action came within the meaning of the second and third limbs of s. 23(1) of the Act. Therefore, the learned judge was right in holding that the respondent was entitled to file this action at the High Court in Kuala Terengganu as the said court had the jurisdiction to hear it. (paras 7, 8 & 9)
- (2) From the facts of this case, it would appear that both the High Court at Kuala Terengganu and the High Court at Miri, Sarawak had concurrent jurisdiction to hear the respondent's claim. Under the circumstances, the appellant was right in contending that the provisions of s. 23(1)(a) and (c) of the Act applied in its favour. Be that as it may, the appellant's application was not on the issue of '*forum conveniens*' but on the issue of whether the High Court at Kuala Terengganu had the jurisdiction to entertain the respondent's claim and based on the facts of this case and a proper construction of s. 23(1) of the Act, it was neither inconsistent nor unlawful for this court to arrive at the finding that both the High Court at Kuala Terengganu and the High Court at Miri, Sarawak had the jurisdiction to entertain the respondent's claim. (paras 10 & 11)
- (3) The power of striking out pleadings under O. 18 r. 19 of the RHC as invoked by the appellant in this case could only be exercised when the respondent's claim on the face of it was obviously bound to fail. The respondent's claim, however, was not such a case. (para 12)

B**C****D****E****F****G****H****I**

A Bahasa Malaysia translation of headnotes

- Responden telah memfail tuntutan terhadap perayu bagi mendapatkan sejumlah wang dari perayu atas barangan yang dihantarserah oleh responden kepada projek perayu di Paka, Terengganu, ekoran satu perjanjian bekalan yang dimeterai oleh mereka. Perayu kemudian memfail permohonan saman dalam kamar bagi mengenepikan writ dan pernyataan tuntutan responden di bawah A. 18 k. 19 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') atas alasan bahawa Mahkamah Tinggi di Kuala Terengganu tidak berbidangkuasa untuk mendengar tuntutan responden. Yang arif penolong kanan pendaftar bagaimanapun menolak permohonan perayu, sekaligus memutuskan bahawa Mahkamah Tinggi di Kuala Terengganu mempunyai bidangkuasa untuk mendengar tuntutan responden. Perayu merayu tetapi rayuannya tersebut telah ditolak. Perayu merayu seterusnya. Di mahkamah semasa, perayu berhujah bahawa kausa tindakan dan fakta-fakta yang menjadi asas kepada prosiding berlaku di Miri, Sarawak dan bahawa, s. 23(1) Akta Mahkamah Kehakiman 1964 ('Akta'), pada pelaksanaannya, memihak kepada mereka; berakibat, Mahkamah Tinggi yang mempunyai bidangkuasa untuk mendengar kes ini adalah Mahkamah Tinggi Sabah dan Sarawak.

Diputuskan (menolak rayuan)**Oleh Zulkefli Makinudin HMR:**

- F (1)** Yang arif hakim Mahkamah Tinggi, setelah mempertimbang fakta-fakta dan undang-undang yang relevan, telah mencapai keputusan yang betul. Yang arif hakim betul apabila mengatakan bahawa setiap perenggan kecil, yakni perenggan-perenggan kecil (a), (b), (c) and (d) s. 23(1) Akta, diikuti dengan 'comma' dan perkataan 'atau', dan kerana itu harus ditafsirkan secara disjunktif. Dalam kes ini, tidak dinafikan bahawa bahan-bahan seperti yang dituntut oleh perjanjian bekalan telah dihantarserah kepada perayu di projeknya di Paka, Terengganu dan bahawa perayu juga mempunyai alamat perniagaan di Terengganu. Dengan adanya fakta-fakta ini, ianya telah dibuktikan bahawa kes semasa adalah terangkum ke dalam peruntukan maksud cabang kedua dan ketiga s. 23(1) Akta. Oleh itu, yang arif hakim betul apabila merumuskan bahawa responden berhak memfail tuntutannya di Mahkamah Tinggi di Kuala Terengganu, disebabkan mahkamah tersebut berbidangkuasa untuk mendengar tuntutan.

- (2) Berdasarkan fakta kes, kedua-dua Mahkamah Tinggi di Kuala Terengganu dan Mahkamah Tinggi di Miri, Sarawak kelihatan mempunyai bidangkuasa ‘concurrent’ untuk mendengar tuntutan responden. Dalam keadaan sedemikian, perayu betul apabila menegaskan bahawa peruntukan s. 23(1)(a) dan (c) Akta terlaksana dengan memihak kepadanya. Walaupun begitu, permohonan perayu bukanlah atas isu ‘*forum conveniens*’ tetapi sebaliknya atas isu sama ada Mahkamah Tinggi di Kuala Terengganu mempunyai bidangkuasa untuk melayani tuntutan responden. Berdasarkan fakta kes, serta pentafsiran wajar s. 23(1) Akta, tidaklah salah bagi mahkamah ini mencapai keputusan bahawa kedua-dua Mahkamah Tinggi di Kuala Terengganu dan Mahkamah Tinggi di Miri, Sarawak mempunyai bidangkuasa untuk melayani tuntutan responden.
- (3) Kuasa untuk mengenyahkan pliding di bawah A. 18 k. 19 KMT sepertimana yang dipinta perayu di sini hanya boleh dilaksanakan jika tuntutan responden pada permukaannya pasti akan menemui kegagalan. Tuntutan responden, bagaimanapun, tidak bersifat sedemikian.

Case(s) referred to:

Malacca Securities Sdn Bhd v. Loke Yu [1998] 3 CLJ 22 HC (*refd*)

Legislation referred to

Courts of Judicature Act 1964, s. 23(1)(a), (b), (c), (d)

Rules of the High Court 1980, O. 18 r. 19

*For the appellant - Victor Issacs (Bong Ah Loi & Subayogan S with him);
M/s Isaacs & Partners*

*For the respondent - CK Ng (Aziatulazwa Abdul Wahab with him);
M/s Wong & Assoc*

[Appeal from High Court, Kuala Terengganu; Civil Suit No: 22-50-2000]

Reported by Suresh Nathan

JUDGMENT**Zulkefli Makinudin JCA:****Introduction**

[1] The respondent (“the plaintiff in the court below”) filed a claim against the appellant (“the defendant in the court below”) for the sum of RM3,382,740.72 being the amount allegedly due

A to the respondent from the appellant in respect of goods sold and delivered by the respondent to the appellant at its project in Paka, Terengganu pursuant to a supply agreement dated 15 November 1966 entered into between the parties.

B **[2]** The appellant thereafter filed an application by way of summons in chambers to strike out the respondent's writ and statement of claim under O. 18 r. 19 of the Rules of the High Court 1980 ("the RHC") on the ground that the High Court at Kuala Terengganu does not have the jurisdiction to entertain the respondent's claim. The learned senior assistant registrar ("the SAR") dismissed with costs the appellant's application and ruled that the High Court at Kuala Terengganu has the jurisdiction to hear the respondent's claim.

C **[3]** The learned judge of the High Court on appeal by the appellant to the judge-in-chambers against the decision of the SAR dismissed the appellant's appeal with costs and affirmed the decision of the SAR. The appellant now appeals before us against the said decision of the learned judge.

E **Contention Of The Parties**

F **[4]** In the court below and before us it was contended on behalf of the appellant that the High Court at Kuala Terengganu lacks the jurisdiction to hear the respondent's claim for the following reasons:

- (i) the cause of action arose in Miri, Sarawak.
- (ii) the registered addresses of both the appellant and respondent are in Miri, Sarawak.
- G (iii) the cause of action is based on the supply agreement entered into by the parties in Miri, Sarawak.
- (iv) all the invoices of the respondent were issued and effected in Miri, Sarawak and sent to the appellant for payment there in Miri, Sarawak.
- H (v) all the witnesses for the appellant reside in Miri, Sarawak.

I **[5]** It is the case of the appellant that the failure by the appellant to pay the amount as stated in the said invoices which constituted the alleged breach of the agreement on the part of the appellant, occurred in Miri, Sarawak. It is therefore contended for the appellant that the cause of action and the facts on which the

proceedings are based have accrued and occurred in Miri, Sarawak. On the question of jurisdiction it was submitted for the appellant that the provision of s. 23(1)(a) and (c) of the Courts of Judicature Act 1964 ("the Act") applies in favour of the appellant. Thus, the High Court which should have the jurisdiction to hear this case is the High Court in Sabah and Sarawak.

[6] In disputing the appellant's application the respondent submitted that although the supply agreement upon which the basis of the claim is made was entered into by the parties in Miri, Sarawak, the said supply agreement however was for the supply of building materials by the respondent to the appellant for the appellant's project in Paka, Terengganu. Furthermore at the material time the appellant also had a business address at No. 743, Jalan Besar, Kg. Cacar Batu, 23100 Paka, Dungun, Terengganu. For the respondent it was pointed out that these facts were not disputed at all by the appellant. Learned counsel for the respondent submitted that the High Court of Malaya at Kuala Terengganu therefore has the jurisdiction to hear the respondent's claim by virtue of the provisions of s. 23(1)(b) and (c) of the Act.

Decision Of The Court On Appeal

[7] Having perused the grounds of judgment of the learned trial judge, we are of the considered view that the learned judge, after having considered all the relevant facts and the applicable law, had arrived at a correct decision. The learned judge had rightly stated that in order to decide whether or not the High Court in Kuala Terengganu has the jurisdiction, the court has to examine the provision of s. 23(1) of the Act which reads as follows:

Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where:

- (a) the cause of action arose, or
- (b) the defendant or one of several defendants resides or has his place of business, or
- (c) the facts on which the proceedings are based exist or are alleged to have occurred, or
- (d) any land the ownership of which is disputed is situated,

- A within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.
- B **[8]** We are in agreement with the views and finding of the learned judge when he stated that subparagraphs (a), (b), (c) and (d) and each of them is followed by a comma and the word ‘or’, and this means that they must be construed disjunctively. The learned judge went on to state that a party instituting a proceeding in a High Court may do so if his case falls within any
- C one of the subparagraphs, citing the case of *Malacca Securities Sdn. Bhd, v. Loke Yu* [1998] 3 CLJ 22 as the authority for the said proposition.
- D **[9]** In this case it is not disputed that the supply of materials as envisaged in the supply agreement was delivered to the appellant’s project at Paka, Terengganu and the appellant had a business address in Terengganu. With the existence of these undisputed facts it was clearly shown that this action come within the meaning of the second and third limbs of s. 23(1) of the Act.
- E We therefore find that the learned judge was right in holding that the respondent is entitled to file this action at the High Court in Kuala Terengganu as the said aourt has the jurisdiction to hear it.
- F **[10]** We would like to state here that from the facts of this case it would appear that both the High Court at Kuala Terengganu and the High Court at Miri, Sarawak have concurrent jurisdiction to hear the respondent’s claim. The appellant would be correct in its argument that the cause of action arose and the facts on which the action is based have also occurred in Miri, Sarawak
- G coupled with the fact that the appellant resides there too. Under the circumstances the appellant was right in contending that the provisions of s. 23(1)(a) and (c) of the Act apply in favour of the appellant. Be that as it may, the appellant’s application which this court is required to decide, is not on the issue of “forum conveniens” but on the issue of whether the High Court at Kuala
- H Terengganu has the jurisdiction to entertain the respondent’s claim.
- I **[11]** Based on the facts of this case and a proper construction of s. 23(1) of the Act, we are of the view that it is not inconsistent or unlawful for this court to arrive at the finding that both the High Court at Kuala Terengganu and the High Court at Miri, Sarawak have the jurisdiction to entertain the respondent’s

claim. Whatever legitimate reasons may be advanced in favour of the appellant that the respondent should have commenced its action in the High Court at Miri, Sarawak, we take the view, however that it would not nullify the respondent's right in choosing the forum to file and pursue the action at the High Court in Kuala Terengganu which has concurrent jurisdiction to entertain such a claim.

Conclusion

[12] We find it is most appropriate here to state the well established principle in that the power of striking out pleadings under O. 18 r. 19 of the RHC as invoked by the appellant in this case is too well-known that it can only be exercised when the respondent's claim on the face of it is obviously bound to fail. The respondent's claim, however, is not such a case. We therefore dismissed the appeal with costs and affirmed the decision of the court below. The deposit is to be paid to the account of taxed costs.

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